

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 DANIEL GONZALEZ,

4 Plaintiff

5 v.

6 DIAMOND RESORTS INTERNATIONAL
MARKETING, INC., et al.,

7 Defendants
8

Case No.: 2:18-cv-00979-APG-NJK

**Order Denying as Moot Motion to
Supplement**

[ECF No. 246]

9 Daniel Gonzalez and Jeffrey Hughes sue Diamond Resorts International Marketing, Inc.
10 and West Maui Resorts Partners, L.P. (WMRP) under the Fair Labor Standards Act (FLSA) on
11 behalf of themselves and similarly situated vacation counselors. The defendants move to
12 supplement their motion to dismiss at ECF No. 199 to include a request to dismiss Steven Miller
13 as an opt-in plaintiff. The defendants argue that Miller's consent form to opt in as a plaintiff was
14 untimely, Miller signed a valid arbitration agreement, and the plaintiffs' counsel agreed to
15 dismiss Miller but did not do so by the time the defendants filed this motion. In response, the
16 plaintiffs withdrew Miller's consent form. ECF Nos. 247, 248.

17 I deny the defendants' motion as moot because Miller's form has been withdrawn. I deny
18 the defendants' request for attorneys' fees related to this motion because they raised the issue for
19 the first time in their reply brief. *See Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) ("The
20 district court need not consider arguments raised for the first time in a reply brief.").

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1 I THEREFORE ORDER that the defendants' motion to supplement (ECF No. 246) is
2 **DENIED as moot.**

3 DATED this 2nd day of November, 2021.



4 ANDREW P. GORDON
5 UNITED STATES DISTRICT JUDGE
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